

MEMO

TO: CURTIS N. DUCLOS, JR.
AND
ALL BUREAU EMPLOYEES

MAY 20, 1998

FROM:  CHARLES W. DESMARAIS, JR.
ADMINISTRATOR, BUREAU OF HEARINGS

SUBJECT: TECHNICAL ADVICE MEMORANDUMS
BOH-98-1 AND BOH-98-2

ATTACHED PLEASE FIND 2 TECHNICAL ADVICE MEMORANDUMS ISSUED
PURSUANT TO Saf-C 102.061 AND APPROVED BY COMMISSIONER FLYNN ON MAY
19, 1998. THEY ARE EFFECTIVE IMMEDIATELY.

INTRA DEPARTMENT MEMORANDUM
NH DEPARTMENT OF SAFETY-BUREAU OF HEARINGS

TO: CURTIS N. DUCLOS, JR. MAY 19, 1998
AND
ALL BUREAU EMPLOYEES

FROM: JOHN A. STEPHEN
ASSISTANT COMMISSIONER

SUBJECT: TECHNICAL ADVICE MEMORANDUM (TAM)
BOH-98-1 IMPLEMENTATION OF Saf-C 2804.021

This TAM is pursuant to Saf-C 102.061 and shall be binding upon all members of the bureau of hearings. Pursuant to RSA 541-A:16 II (a), it shall be made available to the public and should be filed within your Saf-C 2800 series rules or in a separate binder.

On April 1, 1998, Saf-C 2804.021 was adopted to ensure uniform application of RSA 265:91-b I © relative to either side failing to appear for an Administrative License Suspension (ALS) hearing "without good cause shown". Please note that, unlike other administrative hearings we hold, the word "default" does not appear in the ALS statute or rules and therefore the procedure for "default" hearings (IE: default followed by a motion to reopen) is not applicable in ALS cases.

Instead, when a failure to appear by either or both sides in an ALS case occurs and "good cause" cannot be immediately determined, you shall issue an order which:

1. continues the hearing for 10 days;
2. affords the side(s) the opportunity to show "good cause" for failing to appear; and
3. specifies whether the person's driver license or driving privileges should be restored.

Please refer to the attached formatted shells which should be added to your existing shells and utilized when either or both sides fail to appear for an ALS hearing.

Approved May 19, 1998 by:


Richard M. Flynn, Commissioner

REPORT OF HEARING EXAMINER

RE:
DOB:
DATE OF HEARING:
DMV FILE #:
DOS HEARING #:
REFERENCE:
PRESIDING HEARING EXAMINER:
RESPONDENT REPRESENTED BY:
STATE:
OTHER PERSON(S) PRESENT: None

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The Respondent, *****, and the State, Officer/Trooper ***** both failed to appear at the administrative license suspension hearing scheduled for *. The following is ordered:

The hearing is continued for 10 days. The confirmation of notice of suspension dated * with effective date of suspension * remains in full force and effect.

The Respondent and the State, Officer/Trooper shall both advise the Hearings Examiner in writing on or before * as to why he/she failed to appear. Failure to appear could result in dismissal, suspension being sustained, or hearing being rescheduled. Good cause shall be determined by Saf-C 203.21(b).

Hearings Examiner

/pas

Written report/mailed:

cc: Officer/Trooper
Attorney/Respondent

REPORT OF HEARING EXAMINER

RE:
DOB:
DATE OF HEARING:
DMV FILE #:
DOS HEARING #:
REFERENCE:
PRESIDING HEARING EXAMINER:
RESPONDENT REPRESENTED BY:
STATE:
OTHER PERSON(S) PRESENT: None

=====

The Respondent, *****, and his/her Attorney ***** appeared at the administrative license suspension hearing scheduled for *****. The state, Officer/Trooper *****, of the ***** Police Department/New Hampshire State Police failed to appear. The following is ordered:

The hearing is continued for 10 days. Respondent's driving privileges are hereby restored.

Officer/Trooper ***** shall advise the Hearings Examiner in writing on or before ***** as to why he/she failed to appear. Per RSA 265:91-b, I(c), failure to appear without good cause shall result in dismissal. Good cause shall be determined by Saf-C 203.21(b).

Hearings Examiner

/pas

Written report/mailed:

cc: Officer/Trooper
Attorney/Respondent

REPORT OF HEARING EXAMINER

RE:
DOB:
DATE OF HEARING:
DMV FILE #:
DOS HEARING #:
REFERENCE:
PRESIDING HEARING EXAMINER:
RESPONDENT REPRESENTED BY:
STATE:
OTHER PERSON(S) PRESENT: None

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The state, Officer/Trooper ***** of the ***** Police Department/New Hampshire State Police appeared at the administrative license suspension hearing scheduled for *. The Respondent, *, failed to appear. The following is ordered:

The hearing is continued for 10 days. The confirmation of notice of suspension dated * with effective date of suspension * remains in full force and effect.

Respondent shall advise the Hearings Examiner in writing on or before * as to why he/she failed to appear. Per RSA 265:91-b, I(c), failure to appear without good cause shall result in the right to a hearing being waived and the order of suspension sustained. Good cause shall be determined by Saf-C 203.21(b).

Hearings Examiner

/pas

Written report/mailed:

cc: Respondent/Attorney
Officer/Trooper

INTRA DEPARTMENT MEMORANDUM
NH DEPARTMENT OF SAFETY-BUREAU OF HEARINGS

TO: CURTIS N. DUCLOS, JR. MAY 19, 1998
AND
ALL BUREAU EMPLOYEES

FROM: JOHN A. STEPHEN
ASSISTANT COMMISSIONER

SUBJECT: TECHNICAL ADVICE MEMORANDUM (TAM)
BOH-98-2 IMPLEMENTATION OF Saf-C 2801.041

This TAM is pursuant to Saf-C 102.061 and shall be binding upon all members of the bureau of hearings. Pursuant to RSA 541-A: 16 II (a), it shall be made available to the public and should be filed within your Saf-C 2800 series rules or in a separate binder.

On January 1, 1997, RSA 265:1-a took effect which requires prior judicial approval of "Sobriety Checkpoints". Specifically, this statute empowers the Superior Court to "issue an order" authorizing sobriety checkpoints after determining that it is "warranted" and that the "proposed method of stopping vehicles satisfied constitutional guarantees."

The validity of the order issued by the superior court is not within the scope of the Administrative License Suspension (ALS) hearing prescribed in RSA 265:91-b II (a) - (f). A hearings examiner has no authority to review and/or overturn a superior court order. However, hearings examiners should allow parties to place an objection on the record in order to preserve this issue for a superior court appeal.

Hearings examiners must continue to recognize that reasonable/articulable grounds for the stop are subject to review and therefore, whether the law enforcement officer has followed "the proposed method of stopping vehicles" as determined by the superior court order, is within the scope of the ALS hearing.

Approved May 19, 1998 by:


Richard M. Flynn, Commissioner